

Introduced by Senator Leno

February 12, 2013

An act to amend Sections 120975 and 121010 of, and to add Section 120986 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, as introduced, Leno. Public health: health records: confidentiality.

Under the federal Patient Protection and Affordable Care Act (PPACA), each state is required to, by January 1, 2014, establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law establishes the California Health Benefit Exchange (Exchange) within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014. Existing law also provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Under the PPACA, beginning January 1, 2014, the state is authorized to expand Medi-Cal coverage to specified eligibility groups.

Existing law also provides specified health care coverage to individuals under the AIDS Drug Assistance Program (ADAP) and under federal Ryan White Act-funded programs, which are administered by the State Department of Public Health. Existing law, with some exceptions, prohibits the disclosure of the results of an HIV test to any 3rd party in a manner that identifies or provides identifying

characteristics of the person to whom the test results apply. Existing law also provides that public health records related to HIV or AIDS containing personal identifying information that were developed or acquired by a state or local public agency shall be confidential and shall not be disclosed, except as otherwise provided by law or pursuant to written authorization.

This bill would authorize the State Department of Public Health, subject to specified provisions, to share health records involving the diagnosis, care, and treatment of HIV or AIDS related to a beneficiary enrolled in federal Ryan White Act-funded programs who may be eligible for services under the PPACA with participating entities, as defined, in health care coverage expansions under the PPACA. The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 120975 of the Health and Safety Code
2 is amended to read:
3 120975. To protect the privacy of individuals who are the
4 subject of ~~blood~~ testing for ~~antibodies~~ to human immunodeficiency
5 virus (HIV), the following shall apply:
6 Except as provided in Section 1603.1, 1603.3, or 121022, no
7 person shall be compelled in any state, county, city, or other local
8 civil, criminal, administrative, legislative, or other proceedings to
9 identify or provide identifying characteristics that would identify
10 any individual who is the subject of ~~a blood~~ *an HIV* test, *as defined*
11 *in subdivision (c) of Section 120775*, to detect antibodies to HIV.
12 SEC. 2. Section 120986 is added to the Health and Safety Code,
13 to read:
14 120986. (a) Notwithstanding any other state law, for purposes
15 of implementing the federal Patient Protection and Affordable
16 Care Act (PPACA) (Public Law 111-148), as amended by the
17 Health Care and Education Reconciliation Act of 2010 (Public
18 Law 111-152), including, but not limited to, ensuring safe
19 transitions to Medi-Cal, the Medi-Cal Bridge Program, or any
20 insurance plan certified by the California Health Benefits Exchange
21 (Exchange) established pursuant to Title 22 (commencing with
22 Section 100500) of the Government Code, the State Department

1 of Public Health may share health records involving the diagnosis,
2 care, and treatment of human immunodeficiency virus (HIV) or
3 acquired immunodeficiency syndrome (AIDS) related to a
4 beneficiary enrolled in federal Ryan White Act-funded programs
5 who may be eligible for services under the PPACA, with entities
6 participating in health care coverage expansions under the PPACA,
7 and the participating entities may share health records relating to
8 persons diagnosed with HIV/AIDS with the State Department of
9 Public Health.

10 (b) The information provided by the State Department of Public
11 Health pursuant to this section shall not be further disclosed by a
12 participating entity, except to any or all of the following:

13 (1) The person who is the subject of the record or to his or her
14 guardian or conservator.

15 (2) The health care provider that provides care to the person
16 with HIV or AIDS to whom the information pertains.

17 (3) The Office of AIDS within the State Department of Public
18 Health.

19 (c) For purposes of this section, “participating entity” means
20 the State Department of Health Care Services, the Exchange,
21 Medi-Cal managed care plans, plans participating in the Medi-Cal
22 Bridge Program, qualified health plans offered through the
23 Exchange, county health departments, and any other entities
24 participating in health care coverage expansions under the PPACA.

25 (d) Information shared pursuant to this section shall be subject
26 to the confidentiality protections of subdivisions (d) and (e) of
27 Section 121025, as well as the Confidentiality of Medical
28 Information Act (Part 2.6 (commencing with Section 56) of
29 Division 1 of the Civil Code), and the federal Health Insurance
30 Portability and Accountability Act of 1996 (Public Law 104-191).

31 (e) This section shall only be implemented to the extent
32 permitted by federal law.

33 SEC. 3. Section 121010 of the Health and Safety Code is
34 amended to read:

35 121010. Notwithstanding Section 120975 or 120980, the results
36 of ~~a blood test~~ *an HIV test, as defined in subdivision (c) of Section*
37 *120775*, to detect antibodies to the probable causative agent of
38 AIDS may be disclosed to any of the following persons without
39 written authorization of the subject of the test:

1 (a) To the subject of the test or the subject's legal representative,
2 conservator, or to any person authorized to consent to the test
3 pursuant to subdivision (b) of Section 120990.

4 (b) To a test subject's provider of health care, as defined in
5 subdivision (d) of Section 56.05 of the Civil Code, except that for
6 purposes of this section, "provider of health care" does not include
7 a health care service plan regulated pursuant to Chapter 2.2
8 (commencing with Section 1340) of Division 2.

9 (c) To an agent or employee of the test subject's provider of
10 health care who provides direct patient care and treatment.

11 (d) To a provider of health care who procures, processes,
12 distributes, or uses a human body part donated pursuant to the
13 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
14 Section 7150) of Part 1 of Division 7).

15 (e) (1) To the designated officer of an emergency response
16 employee, and from that designated officer to an emergency
17 response employee regarding possible exposure to HIV or AIDS,
18 but only to the extent necessary to comply with provisions of the
19 Ryan White Comprehensive AIDS Resources Emergency Act of
20 1990 (~~P.L.~~ (*Public Law* 101-381; 42 U.S.C. Sec. 201).

21 (2) For purposes of this subdivision, "designated officer" and
22 "emergency response employee" have the same meaning as these
23 terms are used in the Ryan White Comprehensive AIDS Resources
24 Emergency Act of 1990 (~~P.L.~~ (*Public Law* 101-381; 42 U.S.C.
25 Sec. 201).

26 (3) The designated officer shall be subject to the confidentiality
27 requirements specified in Section 120980, and may be personally
28 liable for unauthorized release of any identifying information about
29 the HIV results. Further, the designated officer shall inform the
30 exposed emergency response employee that the employee is also
31 subject to the confidentiality requirements specified in Section
32 120980, and may be personally liable for unauthorized release of
33 any identifying information about the HIV test results.